
ATTORNEY DISCIPLINE

Thursday, February 18, 2016
U.S. Department of Justice
Executive Office for Immigration Appeals
Board of Immigration Appeals
Falls Church VA 22041

AGENDA

This session will be held in the K.D. Rooney Training Center (Tower - 18th Floor)

The purpose of this presentation is to discuss attorney discipline in the context of attorneys practicing before Immigration Judges and the Board of Immigration Appeals. The presentation will provide an overview of the attorney discipline regulations, focusing on the regulatory grounds for discipline, including competence, diligence, communication, and conduct prejudicial to the administration of justice, among others. The training will also address the role of agency disciplinary counsel and the interplay between the immigration appellate process and attorney discipline.

LEARNING OBJECTIVES:

By the completion of training, attendees will be able to:

- Discuss the attorney discipline regulations;
- Understand the grounds for discipline under the regulations;
- Understand the interplay between the immigration appellate process and attorney discipline; and
- Identify potential attorney discipline matters in the context of immigration appellate proceedings.

THURSDAY, FEBRUARY 18, 2016

9:40 – 10:00 a.m. Registration

10:00 – 10:05 a.m. History of the Attorney Discipline Program

Moderator: Veronica Rubi

Senior Legal Advisor
U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
Falls Church, VA 22041

Speaker: Jennifer Barnes

EOIR Disciplinary Counsel
U.S. Department of Justice
Executive Office for Immigration Review
Office of General Counsel
Falls Church, VA 22041

10:05 – 10:25 a.m. Discussion of Grounds for Discipline

Jennifer Barnes, Speaker

10:25 – 11:00 a.m. Overview of Attorney Discipline Process and Board Case Law

Jennifer Barnes, Speaker

11:00 – 11:10 a.m. **Break**

11:10 – 11:40 a.m. Discussion of Common Mistakes Made by Immigration Attorneys

Jennifer Barnes, Speaker

11:40 – 11:55 a.m. Panel and Audience Discussion

Veronica Rubi, Moderator

Jennifer Barnes, Speaker

11:55 – 12:00 p.m. Board Process and Closing Comments

No CLE credit sought

12:01 p.m. Adjourn

DOJ's Regulation and Discipline of Immigration Attorneys

Scott Anderson
Deputy Disciplinary Counsel
Executive Office for Immigration Review

I. Introduction

The Executive Office for Immigration Review (EOIR) of the Department of Justice (Department) primarily adjudicates cases in which the Department of Homeland Security (DHS) seeks the removal of aliens from the United States. Aliens in removal proceedings are entitled to be "represented (at no expense to the Government) by such counsel, *authorized to practice* in such proceedings, as he shall choose." 8 U.S.C. § 1362 (2006) (emphasis added). Approximately 50 years ago, the Department promulgated regulations establishing qualifications for private immigration practitioners appearing before the Board of Immigration Appeals (Board) and the former Immigration and Naturalization Service (INS), rules of professional conduct for those practitioners, and a disciplinary process by which the Department could prohibit practitioners from practice before the Board and INS. *See 23 Koden v. U.S. Dep't of Justice*, 564 F.2d 228, 230-31 (7th Cir. 1977). In 2000 and 2008, the Department significantly reformed and expanded these regulations. *See* 73 Fed. Reg. 76,914, 76,915 (Dec. 18, 2008) (to be codified at 8 C.F.R. pt. 1001, 1003, 1292).

Although Congress transferred the functions of the former INS to DHS, *see* 6 U.S.C.A. § 251 (2006), the Department and DHS maintain a unified process for adjudicating allegations of immigration practitioner misconduct. The disciplinary counsels for either EOIR or DHS may initiate disciplinary proceedings with the Board, and any final order prohibiting a practitioner from practice before one agency may be made applicable to the other. *See* 8 C.F.R. §§ 292.3(e), 1003.101(a), 1003.105 (2009).

The purpose of this article is to summarize the Department's professional conduct rules and

disciplinary process for private immigration practitioners and to explain the circumstances under which Assistant United States Attorneys (AUSAs) interact with EOIR's Practitioner Disciplinary Program. Because the Department's and DHS's disciplinary regulations are nearly identical except for some recent amendments to the Department's regulations, all references and citations in this article will be to the Department and the Department's regulations.

II. Individuals authorized to practice before EOIR

The Department permits both attorneys and non-attorney representatives to practice before EOIR. 8 C.F.R. § 1292.1 (2009). Collectively, attorneys and representatives are called "practitioners." *Id.* at §1003.101(b).

Attorneys comprise the only category of practitioner who may practice before EOIR as a matter of right and without restriction as to whom they may represent. An "attorney" is someone who is in good standing and eligible to practice law before the highest court of a state or territory of the United States or the District of Columbia, and "is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law." 8 C.F.R. § 1001.1(f) (2009). If a practitioner no longer meets the definition of "attorney" due to an order of suspension or disbarment in another jurisdiction, EOIR must provide that practitioner with due process before denying the practitioner "the right to further practice before the agency." *See Bogart v. Carter*, 445 F.2d 321, 322 (9th Cir. 1971); *Matter of Bogart*, 15 I&N Dec. 552, 556-61 (BIA 1975, AG 1976); 8 C.F.R. § 1003.103 (2009).

The Department's regulations also permit certain non-attorneys to practice before EOIR, with varying degrees of restrictions. EOIR may accredit non-attorneys to serve as representatives if the non-attorneys work for non-profit organizations recognized by EOIR, the organizations sponsor the non-attorneys, and the non-attorneys have experience in and knowledge of immigration and naturalization law. *See* 8 C.F.R. § 1292.2 (2009). Accredited representatives must be re-accredited every 3 years and continue to be employed by the sponsoring organization in order to practice before EOIR. Accredited representatives may only accept compensation from their employing organization and cannot charge aliens a fee for representational services. *See* 8 C.F.R. § 1003.102(a)(2). EOIR maintains a list of recognized organizations and accredited representatives at <http://www.usdoj.gov/eoir/statspub/raroster.htm>.

In addition to accredited representatives, other non-attorneys may qualify to practice before EOIR. Law students and law graduates of accredited American law schools may represent aliens; however, the law students or graduates must work under the supervision of a faculty member, a licensed attorney, or an accredited representative; must not accept fees from aliens for the representation; and must receive EOIR's permission before undertaking the representation. *See* 8 C.F.R. § 1292.1(a)(2) (2009). Further, a non-attorney who is a "reputable individual" may represent an alien. However, he or she may not accept a fee, may only appear in a single case, must have a pre-existing relationship with the alien (e.g., relative, neighbor, clergy), and must receive EOIR's permission to represent the alien. *See id.* § 1292.1(a)(3).

III. The rules of professional conduct for practitioners

The Department's regulations enumerate professional conduct rules with which practitioners must comply. *See* 8 C.F.R. § 1003.102 (2009); 73 Fed. Reg. 76,923 (Dec. 18, 2008) (to be codified at 8 C.F.R. pt. 1001, 1003, 1292). In promulgating these rules, the Department created uniform nationwide rules applicable to practice before Immigration Judges and the Board. *See Gadda v. Ashcroft*, 377 F.3d 934, 944-47 (9th Cir. 2004). By creating these rules, the Department did not seek to preempt state authority over licensed attorneys, nor did it intend to "denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law." *Id.*; 8 C.F.R. § 1003.102 (2009). Because attorneys have to comply with both state bar ethics rules and the Department's rules, the Department based many of its rules on the American Bar Association's Model Rules of Professional Conduct. 73 Fed. Reg. 76,915 (Dec. 18, 2008) (to be codified at 8 C.F.R. pt. 1001, 1003, 1292).

The Department's rules of professional conduct include prohibitions on: charging or receiving

grossly excessive fees; making false statements of material fact or law in a case; improper solicitation; failing to act competently, diligently, and promptly while representing a client; failing to communicate with or comply with the decisions of a client; engaging in conduct that is prejudicial to the administration of justice; engaging in frivolous behavior; assisting an individual, other than a practitioner, to engage in the practice of immigration law; failing to inform an adjudicator of controlling legal authority known to the practitioner but not disclosed by opposing counsel; engaging in contumelious or otherwise obnoxious conduct that would constitute contempt of court in a judicial proceeding; repeatedly failing to appear at scheduled hearings or case-related meetings in a timely manner; failing to properly enter an appearance when a practitioner substantively works on a case; and filing briefs that use "boilerplate" language with little application of the law to the facts in a case. Further, the Department may institute summary disciplinary proceedings when practitioners have been found guilty of or pleaded guilty or *nolo contendere* to a serious crime or have been prohibited from practice before or resigned with a disciplinary investigation or proceeding pending from a state or federal court or an executive branch agency. 8 C.F.R. § 1003.102 (2009); 73 Fed. Reg. 76,914, 76,923 (Dec. 18, 2008) (to be codified at 8 C.F.R. pt. 1001, 1003, 1292).

IV. Disciplinary proceedings and sanctions

EOIR may impose a variety of sanctions on practitioners when it is in the public interest to do so. 8 C.F.R. § 1003.101(a) (2009). It is in the public interest to discipline practitioners who have violated the enumerated rules of professional conduct; however, the professional conduct rules are not the exclusive grounds for imposing disciplinary sanctions. *Id.* § 1003.102.

A. Complaints, investigations, and informal discipline

Any individual may file a complaint against a practitioner with the EOIR Disciplinary Counsel. The EOIR Disciplinary Counsel, the chief prosecutor for disciplinary cases, conducts preliminary inquiries into all complaints and determines whether they have merit. If a complaint lacks merit, it is dismissed. If a complaint has merit, the EOIR Disciplinary Counsel may informally resolve the matter by issuing a written admonition or a warning letter, or by entering into an agreement with the practitioner in lieu of discipline. The EOIR Disciplinary Counsel may also initiate formal disciplinary proceedings. *See* 8 C.F.R. §§ 1003.104-105 (2009).

B. Formal disciplinary proceedings

When the EOIR Disciplinary Counsel determines that sufficient *prima facie* evidence exists to warrant charging a practitioner with professional misconduct, she will file with the Board and serve on the practitioner a Notice of Intent to Discipline (Notice). The Notice contains a statement of the charge(s), a proposed sanction, and a copy of the preliminary inquiry report. The practitioner must file a timely answer to the Notice or the Board will enter a default order. 8 C.F.R. § 1003.105 (2009). If a practitioner files an answer to the Notice, then EOIR will appoint an adjudicating official from a specially trained corps of Immigration Judges and Administrative Law Judges to hear and decide the case. 8 C.F.R. § 1003.106 (2009).

The adjudicating official conducts an adversarial proceeding in which both parties have the right to submit and object to evidence, and to examine and cross-examine witnesses. Although the parties are free to voluntarily exchange information and make stipulations before the hearing, there is no right to formal discovery. The standard of proof is clear and convincing evidence. 8 C.F.R. § 1003.106 (2009); 73 Fed. Reg. 76,914, 76,925-926 (Dec. 18, 2008) (to be codified at 8 C.F.R. pt. 1001, 1003, 1292). If, at the conclusion of proceedings, the adjudicating official sustains any of the charges in the Notice, then the adjudicating official must impose one of the following disciplinary sanctions: expulsion from practice before EOIR and DHS, which is presumptively permanent; suspension from practice before EOIR and DHS; public or private censure; or another appropriate sanction. 8 C.F.R. § 1003.101(a) (2009). Either party to a disciplinary case may appeal an adjudicating official's decision to the Board, which reviews findings of fact and credibility determinations under the clearly erroneous standard and reviews issues of

law and discretion *de novo*. 73 Fed. Reg. 76,914, 76,926 (Dec. 18, 2008) (to be codified at 8 C.F.R. pt. 1001, 1003, 1292).

C. Summary disciplinary proceedings

When the highest court of a state or a federal jurisdiction suspends or disbars a practitioner, or when a practitioner resigns from the bar of one of those courts while a disciplinary investigation or proceeding is pending, the practitioner is subject to summary disciplinary proceedings. Further, practitioners who are found guilty of or plead guilty or *nolo contendere* to a serious crime are also subject to summary disciplinary proceedings. See 8 C.F.R. § 1003.103 (2009).

When a practitioner is subject to summary disciplinary proceedings, the EOIR Disciplinary Counsel must file a petition with the Board to immediately suspend the practitioner until summary disciplinary proceedings have been completed. Upon receipt of the petition and a certified copy of the order evidencing the basis for summary disciplinary proceedings, the Board will issue an order immediately suspending the practitioner. The Board may set aside the immediate suspension order only for good cause shown and if it is in the interest of justice to do so. *Id.* It is good cause and in the interests of justice to set aside an immediate suspension order when the court order on which the immediate suspension is based has been vacated. See 73 Fed. Reg. 76,914, 76,920 (Dec. 18, 2008) (to be codified at 8 C.F.R. pt. 1001, 1003, 1292). However, a practitioner's argument that he was able to maintain good standing with one state bar despite being suspended or disbarred by another court does not show good cause. Further, the Board will not set aside an immediate suspension order if it appears that the practitioner is not likely to prevail in summary disciplinary proceedings. *Matter of Rosenberg*, 24 I&N Dec. 744, 746 (BIA 2009).

During summary disciplinary proceedings, a practitioner may contest the imposition of discipline but will not be given the opportunity to re-litigate every issue raised in a previous criminal or disciplinary case. *Bogart*, 15 I&N Dec. at 561. If a practitioner fails to show in his or her answer that there is a material issue of fact in dispute, then the Board may summarily adjudicate the case without referring it to an adjudicating official. A certified copy of a court record concerning a criminal conviction is conclusive proof that the practitioner committed the specified crime. A certified copy of a final order of suspension or disbarment creates a rebuttable presumption that the practitioner engaged in professional misconduct. If the practitioner disputes this presumption, he or she has the burden of proving by clear and convincing evidence that: the underlying disciplinary proceeding was so lacking in notice and opportunity to be heard that it constitutes a deprivation of due process; the disciplinary decision was based on such an infirmity of proof so as to give rise to a clear conviction that the underlying disciplinary decision cannot be accepted; or a grave injustice would result from imposing discipline. 8 C.F.R. § 1003.103(b) (2009). However, as long as minimal due process was given to the practitioner in the initial disciplinary matter and the findings of fact are not patently erroneous, EOIR may accept the disciplinary decision of the other jurisdiction. *Bogart*, 15 I&N Dec. at 562.

D. Public notice of disciplinary sanctions

When EOIR issues a final order imposing expulsion, suspension, or public censure on a practitioner, EOIR provides notice to the public of this discipline. The EOIR Disciplinary Counsel will report the disciplinary order to all jurisdictions in which the practitioner is licensed to practice and to the American Bar Association's National Lawyer Regulatory Data Bank. 8 C.F.R. § 1003.106(d) (2009). Further, the Immigration Courts and the offices of the immigration agencies of DHS post a list of currently disciplined practitioners, see 8 C.F.R. § 1003.106(c) (2009), and EOIR posts this list on its internet Web site at <http://www.usdoj.gov/eoir/profcond/chart.htm>.

E. Reinstatement to practice

Suspended or expelled practitioners may seek reinstatement to practice before EOIR and DHS. When a suspended practitioner completes the term of suspension specified in the final disciplinary order,

the Board will only reinstate the practitioner if the practitioner meets the regulatory definition of either an attorney or representative. 8 C.F.R. § 1003.107(a) (2009).

If a practitioner under a suspension completes half of the term of the suspension or 1 year of a suspension, whichever is longer, the practitioner may seek early reinstatement. Further, if a practitioner has been expelled for at least a year, he or she may also petition for reinstatement. A condition precedent for seeking reinstatement is that the practitioner meet the regulatory definition of either an attorney or representative. The practitioner also has the burden of proving by clear and convincing evidence that he or she possesses the moral and professional qualifications to be a practitioner and that reinstatement will not be detrimental to the administration of justice. *See* 8 C.F.R. § 1003.107(b) (2009). Reinstatement after expulsion is especially difficult because expulsion is presumptively permanent. 8 C.F.R. § 1003.101(a)(1) (2009). Even when an expelled practitioner can meet the definition of an attorney, shows remorse, and has been expelled for nearly 5 years, the Board may still deny reinstatement because of the serious nature of the offense that led to the expulsion (e.g., conviction of immigration related fraud). *See Matter of Krivonos*, 24 I&N Dec. 292, 293 (BIA 2007).

V. Assistant United States Attorneys and EOIR's Practitioner Disciplinary Program

AUSAs will interact with EOIR concerning practitioner discipline in a variety of circumstances that arise in both the civil and criminal context.

A. Defense of EOIR's disciplinary orders in federal court

Practitioners may seek judicial review of EOIR's final disciplinary orders in federal district court under 28 U.S.C. § 1331 (1980). *See Kodon v. U.S. Dep't of Justice*, 564 F.2d 228, 232 (7th Cir. 1977). However, AUSAs have defended every type of decision that EOIR makes during practitioner disciplinary cases, including the Board's immediate suspension order based on an attorney's resignation from a federal court after admitting misconduct in a disciplinary proceeding, *Guajardo v. Mukasey*, No. C-08-1929 PJH, 2008 WL 1734517 (N.D. Cal. Apr. 11, 2008); the Board's immediate suspension order based on an interim suspension by a state bar, *Gadda v. Ashcroft*, No. C-01-3885 PJH, 2001 WL 1602693 (N.D. Cal. Dec. 07, 2001); the Board's final order of reciprocal discipline based on a state supreme court's disbarment order, *Gadda v. Ashcroft*, 377 F.3d 934 (9th Cir. 2004); the Board's denial of a request for reconsideration of a final order of expulsion, *Ramos v. U.S. Dep't of Justice*, 538 F.Supp.2d 4 (D.D.C. 2008), *recons. denied*, 588 F.Supp.2d 38 (D.D.C. 2008); the Board's decision to publish a decision as precedent; the Board's denial of a petition for reinstatement; the EOIR Disciplinary Counsel's issuance of an informal admonition; and the INS's decision to prohibit a practitioner from practice based on his failure to meet the definition of an attorney, *Bogart v. Carter*, 445 F.2d 321 (9th Cir. 1971).

B. Referral of criminal convictions to the EOIR Disciplinary Counsel

AUSAs who successfully prosecute immigration practitioners and obtain findings of guilt, guilty pleas, or pleas of *nolo contendere* to a "serious" crime should report these practitioners to the EOIR Disciplinary Counsel. Serious crimes include felonies and lesser crimes involving the following: interference with the administration of justice; false swearing; misrepresentation; fraud; willful failure to file income tax returns; deceit; dishonesty; bribery; extortion; misappropriation; theft; or an attempt, conspiracy, or solicitation of another to commit a serious crime. 8 C.F.R. § 1003.102(h) (2009). For purposes of disciplinary proceedings, a guilty verdict or a plea of guilt or *nolo contendere* is deemed to be a conviction. *Id.* Therefore, AUSAs should immediately refer practitioners because the Board may impose an immediate suspension before sentencing has been completed. *See id.* § 1003.103(a).

C. Referral of practitioner misconduct to the EOIR Disciplinary Counsel

AUSAs may observe or encounter immigration practitioners who commit misconduct in immigration-related litigation or who have been suspended or disbarred by a state bar or federal court.

AUSAs should refer these practitioners to the EOIR Disciplinary Counsel. Further, if an AUSA determines that an immigration practitioner has committed misconduct in an immigration-related matter and believes that the immigration practitioner should be referred for state bar discipline, the AUSA may forward the matter to the EOIR Disciplinary Counsel to consider such a referral. The Department's regulations permit EOIR to refer private immigration practitioner complaints to appropriate licensing authorities. 8 C.F.R. § 1003.106(d) (2009); 28 C.F.R. § 0.39(a)(9) (2006).

D. EOIR Disciplinary Counsel's referral of potential criminal conduct to United States Attorneys

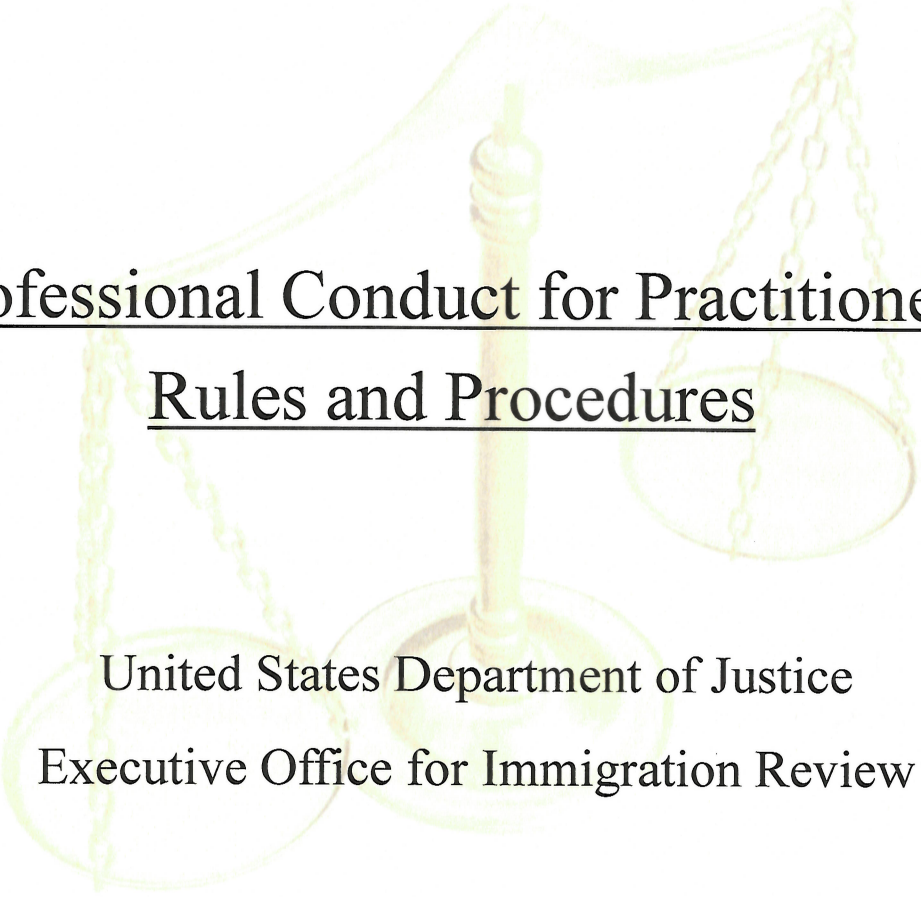
If the EOIR Disciplinary Counsel receives credible information or allegations that a practitioner has engaged in criminal conduct, the EOIR Disciplinary Counsel refers the matter to the appropriate United States Attorney or other appropriate law enforcement agency. In such cases, before pursuing disciplinary sanctions against the practitioner, the EOIR Disciplinary Counsel will coordinate with relevant investigative and prosecutorial authorities in the Department to ensure that neither the disciplinary process nor any criminal prosecution is jeopardized. 73 Fed. Reg. 76,914, 76, 925 (Dec. 18, 2008) (to be codified at 8 C.F.R. pt. 1001,1003, 1292). ♦

ABOUT THE AUTHOR

□ **Scott Anderson** serves as the Deputy Disciplinary Counsel for the Executive Office for Immigration Review, Department of Justice, where he investigates and prosecutes misconduct committed by private attorneys appearing before the Immigration Courts and the Board of Immigration Appeals. Previously, he investigated and prosecuted representational misconduct occurring before Social Security Administration adjudicators, and investigated allegations of judicial misconduct committed by Social Security Administration administrative law judges. He joined the federal government through the Presidential Management Intern Program.✉

This article is not intended to provide advice to Department attorneys regarding any obligations they may have under applicable state bar rules of professional conduct.

Attorney Discipline Program



Professional Conduct for Practitioners Rules and Procedures

United States Department of Justice
Executive Office for Immigration Review

3/22/2016

Attorney Discipline Program

Authority

➤ 8 U.S.C. 1362 Right to Counsel

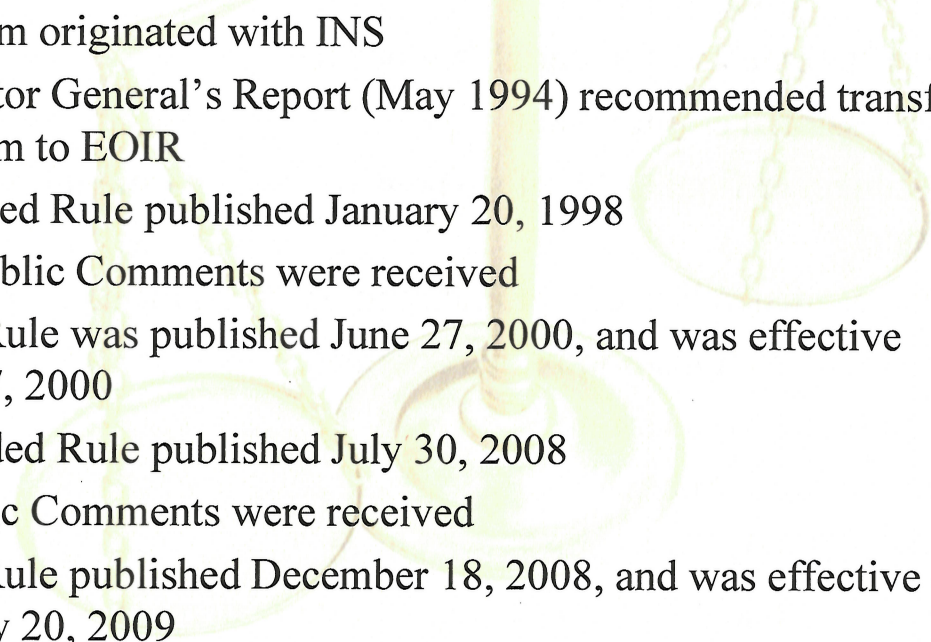
- In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.

➤ 8 CFR 1003.0(e)(1) Professional Standards

- The General Counsel shall administer programs to protect the integrity of immigration proceedings before EOIR, including administering the disciplinary program for attorneys and accredited representatives under subpart G of this part.

Attorney Discipline Program

History

- 
- Program originated with INS
 - Inspector General's Report (May 1994) recommended transferring the program to EOIR
 - Proposed Rule published January 20, 1998
 - 500 Public Comments were received
 - Final Rule was published June 27, 2000, and was effective July 27, 2000
 - Amended Rule published July 30, 2008
 - 4 Public Comments were received
 - Final Rule published December 18, 2008, and was effective on January 20, 2009

Attorney Discipline Program

Grounds for Discipline

“things you shouldn’t do...”

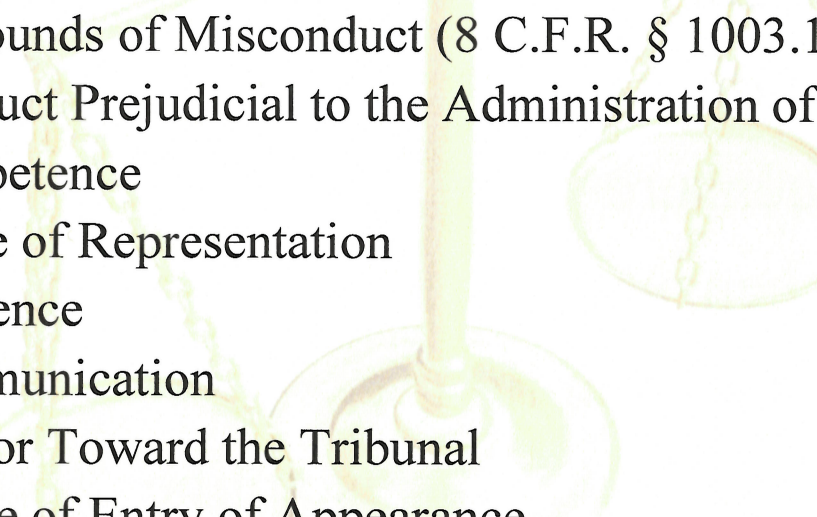
- Charge grossly excessive fees
- Make false statements of material law or fact
- Solicit professional employment
- Become subject to final order of suspension or disbarment by state or federal court
- Make false or misleading communication about qualifications/services
- Engage in contumelious/obnoxious conduct
- Be convicted of serious crime
- Engage in frivolous behavior
- Engage in ineffective assistance of counsel
- Repeatedly fail to appear for hearings in timely manner
- Assist any person in unauthorized practice of law

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Attorney Discipline Program

NEW RULE

8 C.F.R. § 1003.102(n) – (u)

- 
- New Grounds of Misconduct (8 C.F.R. § 1003.102)
 - Conduct Prejudicial to the Administration of Justice
 - Competence
 - Scope of Representation
 - Diligence
 - Communication
 - Candor Toward the Tribunal
 - Notice of Entry of Appearance
 - Repeated Filings Indicating a Substantial Failure to Competently and Diligently Represent the Client

Attorney Discipline Program

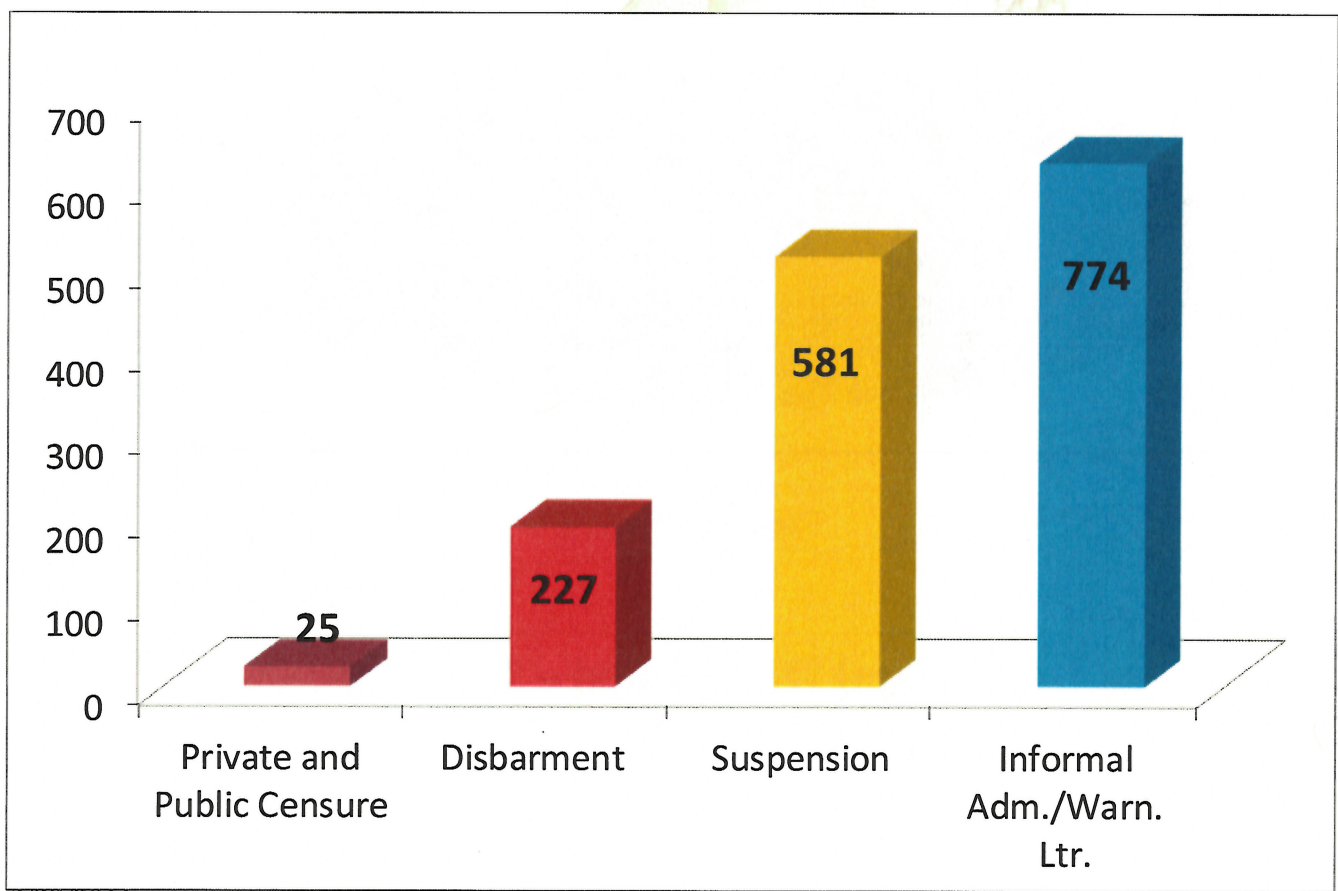
Sanctions

“and if you do...”

- Disbarment
- Suspension
- Public censure
- Private censure
- Informal admonition
- Agreement in lieu of discipline
- Warning letter

Attorney Discipline Program

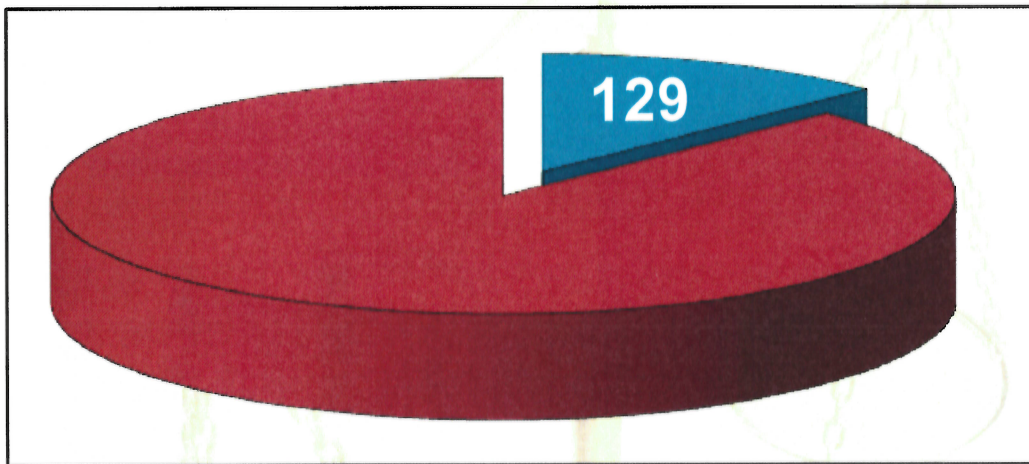
Types of Sanctions



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Attorney Discipline Program

Reinstatements




Reinstated – 8.73%

Total Disciplined – 1561

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Attorney Discipline Program

Sources of Complaints

- 
- Clients
 - Attorneys
 - Immigration Judges
 - State Bars
 - Department of Homeland Security

3/22/2016

Attorney Discipline Program

Filing a Complaint

“Who do you run to for help and how...”

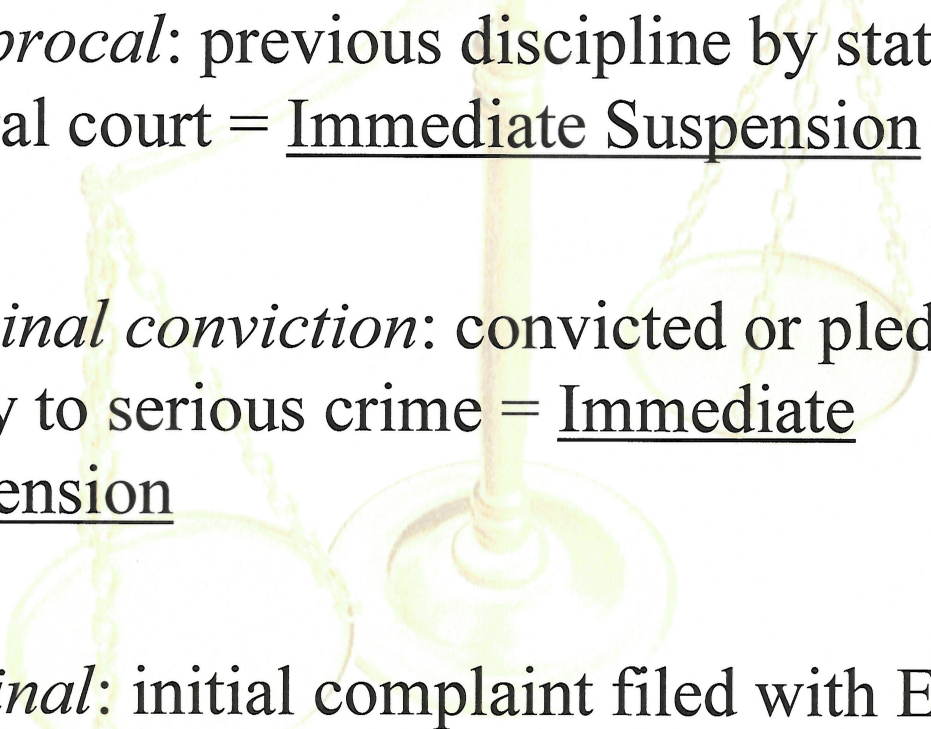
➤ EOIR-FORM – 44

➤ <http://www.usdoj.gov/eoir/eoirforms/eoir44.pdf>

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Attorney Discipline Program

Types of Disciplinary Cases

- 
- *Reciprocal*: previous discipline by state or federal court = Immediate Suspension
 - *Criminal conviction*: convicted or pled guilty to serious crime = Immediate Suspension
 - *Original*: initial complaint filed with EOIR

Attorney Discipline Program

Investigation

“Who did what to whom and when...”

- Preliminary inquiry report
- Certified documents
- Request practitioner's response
- Determination

Attorney Discipline Program

Notice of Intent to Discipline

“What happens now...”

- Allegation
- Rule violation
- Serious misconduct
- Recommended discipline
- 30 days to file an answer
- Default action

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Attorney Discipline Program

Filing an Answer

“Do you request a hearing? ...”

- Adjudicating Official appointed
- Time and place of hearing is scheduled
- Notification of the hearing is sent

Attorney Discipline Program

Hearing

“Your day in court...”

- Reciprocal proceedings – rebuttable presumption as to culpability – Selling v. Radford factors
- Criminal conviction – only issue is type of sanction
- At the hearing:
 - Witnesses
 - Documents
 - Testimony of practitioner
- Decision

Attorney Discipline Program

Appeal Process

“How do I appeal the decision? ...”

- 30 days to file Notice of Appeal with the BIA (Form EOIR-45)
- Transcripts and briefing schedule is sent
- Oral argument (if granted)
- Final administrative order
- Judicial review?

Attorney Discipline Program

BIA Precedent Decisions – Pre-rule

- Matter of Bogart 15 I&N Dec. 552 (BIA, AG 1976)
- Matter of Kodan 15 I&N Dec. 739 (BIA, AG 1976)
aff'd, 564 F. 2d 228 (7th Cir. 1977)
- Matter of Solomon 16 I&N Dec. 388 (BIA, AG 1977)
- Matter of De Anda 17 I&N Dec. 54 (BIA, AG 1979)
- Matter of Sparrow 20 I&N Dec. 920 (BIA 1994)

Attorney Discipline Program

BIA Precedent Decisions – Post-rule

- Matter of Gadda, 23 I&N Dec. 645 (BIA 2003)
Reciprocal discipline – disbarred in California - expelled by BIA
- Matter of Ramos, 23 I&N Dec. 843 (BIA 2005)
Reciprocal discipline – disbarred in Florida - expelled by BIA
- Matter of Truong, 24 I&N Dec. 52 (BIA 2006)
Reciprocal discipline – disbarred in New York - suspended for 7 years by BIA
- Matter of Shah, 24 I&N Dec. 282 (BIA 2007)
Original discipline – false statement of material fact or law
AO imposed 6 month suspension – BIA affirmed
- Matter of Krivonos, 24 I&N Dec. 292 (BIA 2007)
Reinstatement petition denied
- Matter of Jean-Joseph, 24 I&N Dec. 294 (BIA 2007)
Reinstatement petition denied
- Matter of Rosenberg, 24 I&N Dec. 744 (BIA 2009)
Motion to set aside denied

Attorney Discipline Program

BIA Precedent Decisions – Pre-rule

- Matter of Singh, 26 I&N Dec. 623 (BIA 2015)
Original discipline – legal assistant impersonated attorney during telephonic hearings
AO imposed 16 month suspension and 7 years prohibition on telephonic appearances – BIA affirmed

Attorney Discipline Program

List of Disciplined Practitioners

➤ [www. USDOJ.gov/EOIR/profcond/chart.htm](http://www.USDOJ.gov/EOIR/profcond/chart.htm)

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Attorney Discipline Program

Future of the Program

“Where are we going...”

- Educate the public
- Outreach to practitioners
- Attorney Registry & Electronic filing
- Access to DAR (Digital Audio Recording)
- Adjudicating Official Corps

Attorney Discipline Program

Attorney Discipline Team

- Jennifer Barnes (Disciplinary Counsel)

jennifer.barnes@usdoj.gov

- Shelia Williams (Legal Administrative Specialist)
shelia.williams@usdoj.gov

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Attorney Discipline Program

Executive Office of Immigration Review

Office of the General Counsel

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Falls Church, Virginia 20530

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www.USDOJ.gov/EOIR

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Attorney Discipline Program

Panel & Audience Discussion

3/22/2016